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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 vs.

8 EDWIN FUJINAGA,

9 Defendant.

Case No. 2:15-cr-00198-GMN-NJK

ORDER

(Docket No. 149)

10 Pending before the Court is Defendant Edwin Fujinaga's motion for the Court to order
11 Government's MLAT to be filed under seal for the record. Docket No. 149. The Court has
12 considered Defendant's motion and the United States' response. Docket Nos. 149, 187. No reply
13 was filed. *See* Docket.

14 Defendant submits that he filed a motion to compel discovery on September 14, 2018.
15 Docket No. 149 at 1. *See also* Docket No. 96. After the motion was fully briefed, Defendant notes
16 that the Court ordered the United States to provide its efforts to obtain the requested documents
17 under seal. Docket No. 149 at 1. Defendant submits that the United States sent his counsel a copy
18 of that sealed filing; however, it "does not appear" that the United States provided its original
19 MLAT request in the filing. *Id.* As a result, Defendant asks the Court to order the United States
20 to file its MLAT request on the docket under seal, so that it can be made a part of the record in the
21 event the instant case goes before the Ninth Circuit on direct appeal. *Id.* at 2.

22 In response, the United States submits that its 2014 MLAT was not relevant to the issues
23 raised in Defendant's motion to compel. Docket No. 187 at 2. The United States further submits

1 that, in its response to the motion to compel, it asked the Court to allow it to file the MLAT request
2 *ex parte* and *in camera* if the Court wanted to review it despite its lack of relevance to the motion.
3 *Id.* The United States notes that the Court denied the motion to compel without reviewing the
4 MLAT request. *Id.* The United States submits that Defendant cites no authority in support of his
5 request for the filing under seal of an MLAT that the Court never considered in denying
6 Defendant's motion to compel. *Id.* As the Circuit "routinely declines to consider evidence not
7 presented to the district court below," the United States submits, no reason exists for the MLAT
8 to be preserved on the docket for appeal. *Id.* at 2-3.

9 This Court did not review the contents of the 2014 MLAT prior to denying Defendant's
10 motion to compel, as it determined that the MLAT was irrelevant to the request. Further, the Ninth
11 Circuit normally does not consider evidence not reviewed by the district court, and Defendant has
12 presented no authority as to why it would in this instance. *See Kirshner v. Uniden Corp. of Am.*,
13 842 F.2d 1074, 1077 (9th Cir. 1988); *Karmun v. Commissioner*, 749 F.2d 567, 570 (9th Cir. 1984).

14 Accordingly, the Court **DENIES** Defendant's motion for the Court to order Government's
15 MLAT to be filed under seal for the record. Docket No. 149.

16 IT IS SO ORDERED.

17 DATED: October 31, 2018.

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20 NANCY J. KOPPE
21 UNITED STATES MAGISTRATE JUDGE
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